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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of ) MM DOCKET NO. 93-43  
OJEDA BROADCASTING, INC. ) File No. BPH-910705ML  
)  
)  
)  
)  
For Construction Permit for )  
A New FM Station )  
Hobbs, New Mexico )

To: Administrative Law Judge  
John M. Frysiak

**MASS MEDIA BUREAU'S COMMENTS IN SUPPORT  
OF MOTION FOR SUMMARY DECISION**

1. On June 8, 1993, Ojeda Broadcasting, Inc. ("Ojeda"), filed a Motion for Summary Decision, seeking resolution in its favor of all issues designated against it, and grant of its application. See Hearing Designation Order, 8 FCC Rcd 1648 (1993) ("HDO"). The Mass Media Bureau submits the following comments in support.

2. The HDO specified the following issues against Ojeda:

1. To determine whether or not Ojeda was financially qualified at the time she filed her application.
2. To determine, in light of the evidence adduced pursuant to issue 1 above, whether Ojeda misrepresented facts or lacked candor with the Commission in certifying its financial qualifications.
3. To determine, in light of the evidence adduced

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pursuant to issues 1 and 2 above, whether Ojeda possesses the basic qualifications to be a licensee of the facilities sought herein.

Ojeda's was the only application for this facility designated for hearing.

3. In its Motion, Ojeda argues, first, that, because it amended its financial proposal as a matter of right on the tender deadline, before designation, any question as to Ojeda's original financial qualifications is moot. Second, Ojeda argues, even assuming that the question is not moot, Ojeda was financially qualified when it certified to that fact in its application as originally filed.

4. As to the first argument, we point out that the HDO was adopted after the amendment relied upon by Ojeda was on file. Indeed, the HDO specifically refers to the second bank letter relied upon by Ojeda. Nevertheless, an issue was specified "[t]o determine whether or not Ojeda was financially qualified at the time she filed her application." Emphasis supplied. In any event, it is not necessary to reach Ojeda's first argument, in our view, because Ojeda has now shown, by other evidence, that it was, in fact, financially qualified when it filed its application.

5. Attached to Ojeda's Motion, at Exhibit 3, is the affidavit of Ojeda principal Perla Acosta Ojeda. Therein, Mrs.

Ojeda asserts that she and her husband had sufficient net liquid assets on hand to meet Ojeda's projected expenses. Bank records which have been provided support the assertion. Specifically, Mrs. Ojeda has shown that, when they caused the application to be filed, she and her husband anticipated costs of \$50,000 to construct and operate the station for three months. They were counting on using a studio and equipment which they already employ to produce a radio program, as well as land which the Ojedas already own. In addition, both Mr. and Mrs. Ojeda expected to work at the station. The Ojedas had \$55,000 in cash at the time and all of their assets, including their home, were owned free of debt. Thus, it is clear that Ojeda was financially qualified at the time the application was filed, even if, as the HDO concluded, there was some question as to whether the bank letter Ojeda first obtained constituted reasonable assurance of financing from the bank. Because Ojeda's sole principals had the necessary funds in cash, bank financing was not needed at that time. In view of the foregoing, the Bureau believes that Ojeda has clearly established that Issue 1 should be resolved in its favor. See Northampton Media Associates, 4 FCC Rcd 5517 (1989), recon. denied, 5 FCC Rcd 3075 (1990), aff'd, 941 F.2d 1214 (D.C. Cir. 1991).

6. Since Ojeda was financially qualified at the time it filed its application, it necessarily follows that Ojeda did not falsely certify as to those qualifications. In addition, even

though the first letter obtained by the Ojedas, before they had the assistance of counsel, appears to fall short of the Commission's requirements for such letters, the fact remains that Mr. and Mrs. Ojeda believed that they had reasonable assurance of financing from the bank at that time. Thus, they had no deceptive intent when they certified that Ojeda had such reasonable assurance. Issue 2 should be decided in Ojeda's favor, as should the conclusory Issue 3.

7. The HDO did not specify a separate issue to specifically determine Ojeda's current financial qualifications<sup>1</sup>.

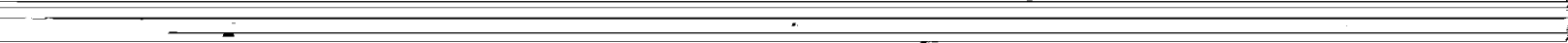



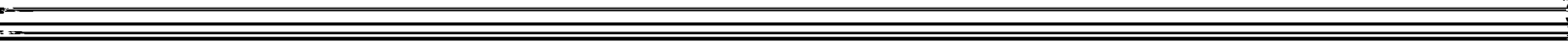












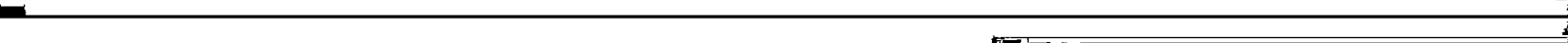

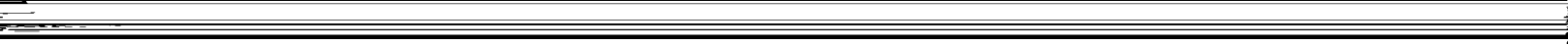




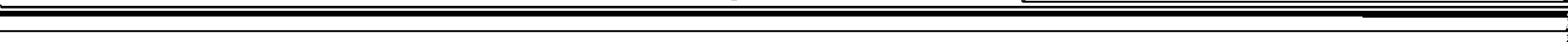
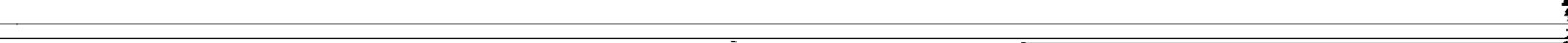




Nevertheless, the Bureau is of the opinion that Ojeda's second bank letter, dated September 16, 1991, complies with Commission requirements. See Exhibit 2. Because the second letter is from the same bank, it also suggests that Ojeda may have had reasonable assurance at all times. In any event, Ojeda's Motion now appends the affidavit of D. Kirk Edens, the bank official with whom Mr. and Mrs. Ojeda met. Exhibit 5. Edens asserts that he was familiar with the Ojedas, who were regular bank customers. When Edens met with the Ojedas, he discussed with them their business plans, their broadcast experience, their financial resources, and possible financing terms. Thus, notwithstanding deficiencies in the original letter, now corrected in the new letter, the record indicates that Ojeda has reasonable assurance

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<sup>1</sup> Indeed, the HDO's only stated objection to the second letter is to the fact that it was obtained after the application was filed.

of bank financing sufficient to construct the proposed station and operate it for three months without revenue. Scioto Broadcasters Limited Partnership, 5 FCC Rcd 5158 (Rev. Bd. 1990), review denied 6 FCC Rcd 1893, recon. dismissed 6 FCC Rcd 4626 (1991).

8. In sum, the Bureau believes that the truth is clear, and no genuine issue remains for resolution in the above captioned



**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 22nd day of June, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments in Support of Motion for Summary Decision"** to:

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